

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

REGINALD T. GILBERTBEY)
Plaintiff)
v.)
UNITED STATES OF AMERICA, et al) C.A. No. 05-69
Defendants)

O R D E R

Plaintiff, a prisoner at the FCI - McKean, has submitted a complaint for filing in this district, together with a request for leave to proceed in forma pauperis. Since it appears that he is unable to pay the costs for commencement of suit, the following order is entered:

AND NOW, this 3rd day of August, 2005;

IT IS HEREBY ORDERED that this Court's Order dated August 1, 2005 is VACATED.

IT IS FURTHER ORDERED that plaintiff's motion for leave to proceed in forma pauperis is granted and the Clerk is directed to file the complaint and the amended complaint.

THE PLAINTIFF IS ADVISED that the grant of in forma pauperis status under 28 U.S.C. §1915 is **ONLY** a waiver of the prepayment of the filing fee and Marshal's fee for service of process. In forma pauperis status **DOES NOT** relieve the plaintiff of any other expenses involved in this lawsuit. FURTHER, THE PLAINTIFF IS ADVISED that at the conclusion of this lawsuit, if it should end with a result favorable to the defendant, judgment may be entered against the plaintiff for all or some of the fees of the Clerk and Marshal and some or all of the costs incurred by the defendant in defending this action.

THE PLAINTIFF IS FURTHER ADVISED that Fed.R.Civ.P. 11 requires that

any filing signed by any party must comply with certain standards. Among these is that statements or allegations of fact must be true or have evidentiary support. This requirement applies to the complaint which the plaintiff has already submitted for filing as well as to any future filings and submissions by any party.

IT IS FURTHER ORDERED that the United States Marshal is directed to mail a copy of the complaint, amended complaint, summons, and this order to each defendant as directed by plaintiff. Costs shall be advanced by the United States.

IT IS FURTHER ORDERED that plaintiff provide the United States Marshal a separate "Process Receipt and Return" form (USM-285) for each defendant (unless he sent properly completed forms to the Clerk with the complaint or amended complaint). If the plaintiff does not have sufficient copies of the form to prepare one for each defendant, he may obtain additional forms from the Clerk of Court. On this form he must give the full name and complete home address of each individual defendant. If plaintiff fails to give the Marshal correct instructions for mailing to any defendant, his claims against that defendant may be dismissed pursuant to Federal Rule of Civil Procedure 4(m). The plaintiff is further advised that no defendant is required to respond to the complaint until he has accepted a copy of the complaint from the Marshal and waived service, or has been served. Therefore, a motion for default cannot properly be filed unless the defendant has failed to file an answer, a motion to dismiss, or a motion for additional time to respond, within sixty (60) days after the Marshal's notice has been mailed, if service is waived pursuant to the notice, or twenty (20) days after being served.

IT IS FURTHER ORDERED that plaintiff shall serve upon each defendant or, if appearance has been entered by counsel, upon their attorneys, a copy of every pleading or other document submitted for consideration by the court and shall include on the original document filed with the Clerk of Court a certificate stating the date a true and correct copy of the pleading or document was mailed to each defendant or his counsel. Any pleading or other document received by a district judge or magistrate judge which has not been filed with the Clerk or which fails to include a certificate of service shall be disregarded by the court.

IT IS FURTHER ORDERED that plaintiff shall immediately advise the court of

any change in address. Failure to do so may result in dismissal for failure to prosecute if the court and other parties are unable to serve pleadings, orders and other documents upon plaintiff.

IT IS FURTHER ORDERED that the parties are allowed ten (10) days from this date to appeal this order to a district judge pursuant to Local Rule 72.1.3 B. Failure to appeal within ten (10) days may constitute waiver of the right to appeal.

S/ Susan Paradise Baxter
Susan Paradise Baxter
CHIEF UNITED STATES MAGISTRATE JUDGE

cc: Reginald T. Gilbertbey, 03854-078
FCI McKean
Post Office Box 8000
Bradford, PA 16701

United States Marshal